

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

IN RE BARD IVC FILTERS  
PRODUCTS LIABILITY LITIGATION

Case No. MD-15-02641-PHX-DGC

This Document Relates to Plaintiff:

GARY LEVINGSTON  
2:18-cv-00476-DGC

**PLAINTIFF'S MOTION TO SUBSTITUTE PARTY AND  
MOTION FOR LEAVE TO AMEND COMPLAINT**

Counsel, pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure, moves this Court for an Order substituting Melissa Levingston on behalf of her deceased husband, Gary Levingston.

1. Gary Levingston filed a products liability lawsuit against Defendants on February 12, 2018, in the United States District Court of Arizona.

2. On April 13, 2018, Plaintiff's counsel filed and served a Notice of Death [Doc. 10724].

3. Melissa Levingston, the surviving spouse of the deceased Gary Levingston, is a proper party to substitute for Plaintiff-decedent Gary Levingston and has proper capacity forward with the surviving products liability lawsuit on his behalf.

4. Melissa Levingston further seeks leave to file the attached Short Form Complaint to substitute herself as Plaintiff on behalf of Plaintiff-decedent Gary Levingston and to add survival action claims. "A party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Rule 15(a)(2), Fed. R. Civ. P.; *Foman v. Davis*, 371 U.S. 178, 182 (1962). Attached to the

contemporaneously filed Plaintiff's First Amended Short Form Complaint, attached hereto as Exhibit A.

Based on the foregoing, Melissa Levingston requests that this Court grant her request for substitution as Plaintiff in this action and for leave to file the First Amended Short Form Complaint and direct the Clerk to file the attached Short Form Complaint.

DATED: September 13, 2018

Respectfully submitted,

**PIERCE SKRABANEK PLLC**

*/s/ Sofia E. Bruera*

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing Notice has contemporaneously with or before filing been served on all parties or their attorneys on September 13, 2018, with the Clerk of the Court using the CM/ECF Filing system. Notice of this filing will be served on all parties of record by operation of the ECF system, and parties may access the filing through the ECF system. I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Sofia E. Bruera  
SOFIA E. BRUERA